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Report of the United Nations Commission on International Trade Law on the work of its forty-sixth session

Report of the Sixth Committee

Rapporteur: Mr. Tofig **Musayev** (Azerbaijan)

I. Introduction

1. At its 2nd plenary meeting, on 20 September 2013, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-eighth session the item entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-sixth session" and to allocate it to the Sixth Committee.

2. The Sixth Committee considered the item at its 9th, 10th, 28th and 29th meetings, on 14 and 16 October and on 8 and 15 November 2013. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/68/SR.9, 10, 28 and 29).

3. For its consideration of the item, the Committee had before it the report of the United Nations Commission on International Trade Law on the work of its forty-sixth session (A/68/17).

4. At the 9th meeting, on 14 October, the Chair of the United Nations Commission on International Trade Law at its forty-sixth session introduced the report of the Commission on the work of its forty-sixth session.

II. Consideration of proposals

A. Draft resolution A/C.6/68/L.9

5. At the 28th meeting, on 8 November, the representative of Austria, on behalf of Argentina, Armenia, Australia, Austria, Belarus, Belgium, Brazil, Bulgaria, Chile, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Gabon, Georgia, Greece, Guatemala, Hungary, India, Ireland, Israel, Italy, Japan, Jordan, Liechtenstein,

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Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Montenegro, the Netherlands, New Zealand, Nigeria, Norway, the Philippines, Portugal, the Republic of Korea, Romania, the Russian Federation, Serbia, Singapore, Slovakia, Slovenia, Spain, Switzerland, Thailand, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Turkey, Uganda, Ukraine, the United Kingdom of Great Britain and Northern Ireland, the United States of America and Venezuela (Bolivarian Republic of), introduced a draft resolution entitled "Report of the United Nations Commission on International Trade Law on the work of its forty-sixth session" (A/C.6/68/L.9).

6. At the 29th meeting, on 15 November, Denmark, Germany and Malta joined in sponsoring the draft resolution.

7. At the same meeting, the Committee adopted draft resolution A/C.6/68/L.9 without a vote (see para. 14, draft resolution I).

B. Draft resolution A/C.6/68/L.10

8. At the 28th meeting, on 8 November, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "Revision of the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency and part four of the UNCITRAL Legislative Guide on Insolvency Law" (A/C.6/68/L.10).

9. At its 29th meeting, on 15 November, the Committee adopted draft resolution A/C.6/68/L.10 without a vote (see para. 14, draft resolution II).

C. Draft resolution A/C.6/68/L.11

10. At the 28th meeting, on 8 November, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "UNCITRAL Guide on the Implementation of a Security Rights Registry" (A/C.6/68/L.11).

11. At its 29th meeting, on 15 November, the Committee adopted draft resolution A/C.6/68/L.11 without a vote (see para. 14, draft resolution III).

D. Draft resolution A/C.6/68/L.12

12. At the 28th meeting, on 8 November, the representative of Austria, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013)" (A/C.6/68/L.12).

13. At its 29th meeting, on 15 November, the Committee adopted draft resolution A/C.6/68/L.12 without a vote (see para. 14, draft resolution IV).

III. Recommendations of the Sixth Committee

14. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Report of the United Nations Commission on International Trade Law on the work of its forty-sixth session

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Reaffirming its belief that the progressive modernization and harmonization of international trade law, in reducing or removing legal obstacles to the flow of international trade, especially those affecting developing countries, would contribute significantly to universal economic cooperation among all States on a basis of equality, equity, common interest and respect for the rule of law, to the elimination of discrimination in international trade and, thereby, to peace, stability and the well-being of all peoples,

Having considered the report of the Commission,[1]

Reiterating its concern that activities undertaken by other bodies in the field of international trade law without adequate coordination with the Commission might lead to undesirable duplication of efforts and would not be in keeping with the aim of promoting efficiency, consistency and coherence in the unification and harmonization of international trade law,

Reaffirming the mandate of the Commission, as the core legal body within the United Nations system in the field of international trade law, to coordinate legal activities in this field, in particular to avoid duplication of efforts, including among organizations formulating rules of international trade, and to promote efficiency, consistency and coherence in the modernization and harmonization of international trade law, and to continue, through its secretariat, to maintain close cooperation with other international organs and organizations, including regional organizations, active in the field of international trade law,

1. *Takes note with appreciation* of the report of the United Nations Commission on International Trade Law;[1]

2. *Commends* the Commission for the finalization and adoption of the Rules on Transparency in Treaty-based Investor-State Arbitration,[2] the Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013),[3] the Guide on

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[1] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17).

[2] Ibid., chap. III and annex I.

[3] Ibid., chap. III and annex II.

the Implementation of a Security Rights Registry,[4] the Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency,[5] part four of the *Legislative Guide on Insolvency Law*, on the obligations of directors in the period approaching insolvency,[6] the guidance on procurement regulations to be promulgated in accordance with article 4 of the Model Law on Public Procurement[7] and the glossary of procurement-related terms used in the Model Law on Public Procurement,[7] as well as for the updating of the Model Law on Cross-Border Insolvency: The Judicial Perspective;[8]

3. *Recognizes* the opinion expressed by the Commission that the secretariat of the Commission should fulfil the role of a repository of published information under the Rules on Transparency in Treaty-based Investor-State Arbitration ("transparency repository"),[9] invites the Secretary-General to consider performing, in accordance with article 8 of the Rules on Transparency, the role of the transparency repository through the secretariat of the Commission, and requests the Secretary-General to report to the General Assembly and the Commission in this regard;

4. *Takes note with interest* of the decisions taken by the Commission as regards its future work and the progress made by the Commission in its work in the areas of arbitration and conciliation, online dispute resolution, electronic commerce, insolvency law, security interests, international trade law aimed at reducing the legal obstacles faced by micro-, small- and medium-sized enterprises throughout their life cycle and public-private partnerships, and commends in particular the efforts undertaken by the Commission to improve the management of its resources while maintaining and increasing its current levels of activity, including through the use of informal working methods where appropriate, with due regard to the formal negotiation process;[10]

5. *Notes with appreciation* the projects of the Commission aimed at promoting the uniform and effective application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), done at New York on 10 June 1958,[11] including the preparation of a guide on the Convention, in close cooperation with international experts, to be submitted to the Commission at a future session for its consideration;[12]

6. *Endorses* the efforts and initiatives of the Commission, as the core legal body within the United Nations system in the field of international trade law, aimed at increasing coordination of and cooperation on legal activities of international and regional organizations active in the field of international trade law and at promoting the rule of law at the national and international levels in this field, and in this regard appeals to relevant international and regional organizations to coordinate their legal activities with those of the Commission, to avoid duplication of efforts and to promote

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[4] Ibid., chap. IV.
[5] Ibid., chap. V, sect. A.
[6] Ibid., sect. B.
[7] Ibid., chap. VI.
[8] Ibid., chap. V, sect. C.
[9] Ibid., para. 80.
[10] Ibid., chaps. III-V, VII, VIII and XV.
[11] United Nations, *Treaty Series*, vol. 330, No. 4739.
[12] See *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), chap. III, sect. E.

efficiency, consistency and coherence in the modernization and harmonization of international trade law;

7. *Reaffirms* the importance, in particular for developing countries, of the work of the Commission concerned with technical cooperation and assistance in the field of international trade law reform and development, and in this connection:

(a) Welcomes the initiatives of the Commission towards expanding, through its secretariat, its technical cooperation and assistance programme, and in that respect encourages the Secretary-General to seek partnerships with State and non-State actors to increase awareness about the work of the Commission and facilitate the effective implementation of legal standards resulting from its work;

(b) Expresses its appreciation to the Commission for carrying out technical cooperation and assistance activities and for providing assistance with legislative drafting in the field of international trade law, and draws the attention of the Secretary-General to the limited resources that are made available in this field;

(c) Expresses its appreciation to the Governments whose contributions enabled the technical cooperation and assistance activities to take place, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the United Nations Commission on International Trade Law Trust Fund for Symposia and, where appropriate, for the financing of special projects and otherwise to assist the secretariat of the Commission in carrying out technical cooperation and assistance activities, in particular in developing countries;

(d) Reiterates its appeal to the United Nations Development Programme and other bodies responsible for development assistance, such as the World Bank and regional development banks, as well as to Governments in their bilateral aid programmes, to support the technical cooperation and assistance programme of the Commission and to cooperate with the Commission and coordinate their activities with those of the Commission in the light of the relevance and importance of the work and programmes of the Commission for the promotion of the rule of law at the national and international levels and for the implementation of the international development agenda, including the achievement of the Millennium Development Goals;

8. *Recalls* the importance of adherence to the rules of procedure and methods of work of the Commission, including transparent and inclusive deliberations, taking into account the summary of conclusions as reproduced in annex III to the report on the work of its forty-third session,[13] requests the Secretariat to issue, prior to meetings of the Commission and of its working groups, a reminder of those rules of procedure and methods of work with a view to ensuring the high quality of the work of the Commission and encouraging the assessment of its instruments, and in this regard recalls its previous resolutions related to this matter;

9. *Welcomes* the activities of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific, in the Republic of Korea, towards reaching out and providing technical assistance with international trade law reforms to developing countries in the region, notes with satisfaction expressions of interest from other States in hosting regional centres of the Commission, and

[13] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17).

requests the Secretary-General to keep the General Assembly informed of developments regarding the establishment of regional centres, in particular their funding and budgetary situation;[14]

10. *Appeals* to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the Trust Fund established to provide travel assistance to developing countries that are members of the Commission, at their request and in consultation with the Secretary-General, in order to enable renewal of the provision of that assistance and to increase expert representation from developing countries at sessions of the Commission and its working groups, necessary to build local expertise and capacities in those countries to put in place a regulatory and enabling environment for business, trade and investment;

11. *Decides*, in order to ensure full participation of all Member States in the sessions of the Commission and its working groups, to continue, in the competent Main Committee during the sixty-eighth session of the General Assembly, its consideration of granting travel assistance to the least developed countries that are members of the Commission, at their request and in consultation with the Secretary-General;

12. *Endorses* the conviction of the Commission that the implementation and effective use of modern private law standards in international trade are essential for advancing good governance, sustained economic development and the eradication of poverty and hunger and that the promotion of the rule of law in commercial relations should be an integral part of the broader agenda of the United Nations to promote the rule of law at the national and international levels, including through the Rule of Law Coordination and Resource Group, supported by the Rule of Law Unit in the Executive Office of the Secretary-General;

13. *Notes* the rule of law panel discussion held at the forty-sixth session of the Commission and the comments transmitted by the Commission highlighting its role in promoting the rule of law and the peaceful settlement of international disputes through its work in the areas of arbitration and conciliation, transparency in investor-State dispute resolution and online dispute resolution and its work towards achieving universal accession to, and the effective implementation and uniform interpretation and application of, the New York Convention;[15]

14. *Notes with satisfaction* that, in paragraph 8 of the declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels, adopted by consensus as resolution 67/1 of 24 September 2012, Member States recognized the importance of fair, stable and predictable legal frameworks for generating inclusive, sustainable and equitable development, economic growth and employment, generating investment and facilitating entrepreneurship and, in this regard, commended the work of the Commission in modernizing and harmonizing international trade law and that, in paragraph 7 of the declaration, Member States expressed their conviction that the rule of law and development were strongly interrelated and mutually reinforcing;

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[14] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), chap. XIII.

[15] Ibid., chap. XIV, sect. C.

15. *Reiterates its request* to the Secretary-General, in conformity with resolutions of the General Assembly on documentation-related matters,[16] which, in particular, emphasize that any invitation to limit, where appropriate, the length of documents should not adversely affect either the quality of the presentation or the substance of the documents, to bear in mind the particular characteristics of the mandate and functions of the Commission in the progressive development and codification of international trade law when implementing page limits with respect to the documentation of the Commission;[17]

16. *Requests* the Secretary-General to continue the publication of Commission standards and the provision of summary records of the meetings of the Commission, including committees of the whole established by the Commission for the duration of its annual session, relating to the formulation of normative texts, and takes note of the Commission's decision to continue the trial use of digital recordings, in parallel with summary records where applicable, with a view to assessing at its forty-seventh session, in 2014, the experience of using digital recordings and, on the basis of that assessment, taking a decision regarding the possible replacement of summary records by digital recordings;[18]

17. *Recalls* paragraph 48 of its resolution 66/246 of 24 December 2011 regarding the rotation scheme of meetings between Vienna and New York;

18. *Notes with appreciation* the work of the Secretariat on the system for the collection and dissemination of case law on Commission texts in the six official languages of the United Nations (the CLOUT system), notes the resource-intensive nature of the system, acknowledges the need for further resources to sustain and expand it, and in this regard welcomes efforts by the Secretariat towards building partnerships with interested institutions, and appeals to Governments, the relevant bodies of the United Nations system, organizations, institutions and individuals to assist the secretariat of the Commission in raising awareness as to the availability and usefulness of the CLOUT system in professional, academic and judiciary circles and in securing the funding required for the coordination and expansion of the system and the establishment, within the secretariat of the Commission, of a pillar focused on the promotion of ways and means of interpreting Commission texts in a uniform manner;

19. *Stresses* the importance of promoting the use of texts emanating from the work of the Commission for the global unification and harmonization of international trade law, and to this end urges States that have not yet done so to consider signing, ratifying or acceding to conventions, enacting model laws and encouraging the use of other relevant texts;

20. *Welcomes* the continued work of the Secretariat on digests of case law related to Commission texts, including their wide dissemination, as well as the continuing increase in the number of abstracts available through the CLOUT system, in view of the role of the digests and the CLOUT system as important tools for the promotion of the uniform interpretation of international trade law, in particular by

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[16] Resolutions 52/214, sect. B, 57/283 B, sect. III, and 58/250, sect. III.

[17] Resolutions 59/39, para. 9, and 65/21, para. 18; see also *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 17* (A/59/17), paras. 124-128.

[18] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 341.

building local capacity of judges, arbitrators and other legal practitioners to interpret those standards in the light of their international character and the need to promote uniformity in their application and the observance of good faith in international trade.

Draft resolution II
Revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency and part four of the Legislative Guide on Insolvency Law of the United Nations Commission on International Trade Law

A. Revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 52/158 of 15 December 1997, in which it recommended the use of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law, contained in the annex thereto,

Noting that legislation based upon the Model Law on Cross-Border Insolvency has been enacted in some 20 States,

Noting also the widespread increase in the incidence of cross-border insolvency proceedings and, accordingly, the growing opportunities for use and application of the Model Law on Cross-Border Insolvency in cross-border insolvency proceedings and the development of international jurisprudence interpreting its provisions,

Noting further that courts frequently have reference to the Guide to Enactment of the Model Law on Cross-Border Insolvency for guidance on the background to the drafting and interpretation of its provisions,

Recognizing that some uncertainty with respect to the interpretation of certain provisions of the Model Law on Cross-Border Insolvency has emerged in the jurisprudence arising from its application in practice,

Convinced of the desirability, in the interpretation of those provisions, of regard to the international origin of the Model Law on Cross-Border Insolvency and the need to promote uniformity in its application,

Convinced also of the desirability of providing additional guidance through revision of the Guide to Enactment of the Model Law on Cross-Border Insolvency with respect to the interpretation and application of selected aspects of the Model Law to facilitate uniform interpretation,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for revising the Guide to Enactment of the Model Law on Cross-Border Insolvency;

2. *Requests* the Secretary-General to publish, including electronically, the text of the Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency, together with the text of the Model Law on Cross-Border Insolvency,[1] and

[1] Resolution 52/158, annex.

to transmit it to Governments and interested bodies, so that it becomes widely known and available;

3. *Recommends* that the Guide to Enactment and Interpretation of the Model Law on Cross-Border Insolvency be given due consideration, as appropriate, by legislators, policymakers, judges, insolvency practitioners and other individuals concerned with cross-border insolvency laws and proceedings;

4. *Also recommends* that all States continue to consider implementation of the Model Law on Cross-Border Insolvency, and invites States that have enacted legislation based upon the Model Law to advise the Commission accordingly.

B. Part four of the Legislative Guide on Insolvency Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolutions 59/40 of 2 December 2004, in which it recommended the use of the *Legislative Guide on Insolvency Law* of the United Nations Commission on International Trade Law,[2] and 65/24 of 6 December 2010, in which it recommended the use of part three of the *Guide*, on the treatment of enterprise groups in insolvency,

Considering that effective insolvency regimes, in addition to providing a predictable legal process for addressing the financial difficulties of troubled enterprises and the necessary framework for their efficient reorganization or orderly liquidation, should also permit an examination to be made of the circumstances giving rise to insolvency and, in particular, of the conduct of directors of such an enterprise in the period before insolvency proceedings commence,

Noting that the *Legislative Guide*, while addressing the obligations of directors of an enterprise once insolvency proceedings commence, does not address the conduct of directors in the period approaching insolvency and the obligations that might be applicable to directors in that period,

Considering that the provision of incentives for directors to take timely action to address the effects of financial distress experienced by an enterprise may be key to its successful reorganization or liquidation and that such incentives should be part of an effective insolvency regime,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for developing and adopting part four of the *Legislative Guide on Insolvency Law*, addressing the obligations of directors of an enterprise in the period approaching the insolvency of that enterprise;[3]

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[2] United Nations publication, Sales No. E.05.V.10.

[3] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), chap. V, sect. B.

2. *Requests* the Secretary-General to publish, including electronically, the text of part four of the *Legislative Guide* and to transmit it to Governments and other interested bodies;

3. *Recommends* that all States utilize the *Legislative Guide* to assess the economic efficiency of their insolvency law regimes and give favourable consideration to the *Guide* when revising or adopting legislation relevant to insolvency, and invites States that have used the *Guide* to advise the Commission accordingly.

Draft resolution III
United Nations Commission on International Trade Law Guide on the Implementation of a Security Rights Registry

The General Assembly,

Recognizing the importance to all States of efficient secured transactions regimes in promoting access to affordable secured credit,

Recognizing also that access to affordable secured credit is likely to assist all countries, in particular developing countries and countries with economies in transition, in their efforts to achieve economic growth, sustainable development, the rule of law and financial inclusion,

Recalling its resolution 63/121 of 11 December 2008, in which it recommended that all States give favourable consideration to the *Legislative Guide on Secured Transactions* of the United Nations Commission on International Trade Law[1] when revising or adopting legislation relevant to secured transactions,

Recognizing that an efficient secured transactions regime with a publicly accessible security rights registry of the kind recommended in the *Legislative Guide on Secured Transactions* is likely to increase access to affordable secured credit,

Noting with satisfaction that the United Nations Commission on International Trade Law Guide on the Implementation of a Security Rights Registry[2] is consistent with and usefully supplements the *Legislative Guide on Secured Transactions* and that the two Guides, together, will provide comprehensive guidance to States with respect to legal and practical issues that need to be addressed when implementing a modern secured transactions regime,

Noting that secured transactions law reform could not be effectively implemented without the establishment of an efficient, publicly accessible security rights registry where information about the potential existence of a security right in movable assets may be registered and that States urgently need guidance with respect to the establishment and operation of such registries,

Taking into account that the harmonization of national security rights registries on the basis of the Guide on the Implementation of a Security Rights Registry is likely to increase the availability of credit across national borders and thus facilitate the development of international trade, which, if achieved on the basis of equality and mutual benefit to all States, is an important element in promoting friendly relations among States,

Expressing its appreciation to intergovernmental and international non governmental organizations active in the field of secured transactions law reform for their participation in and support for the development of the Guide on the Implementation of a Security Rights Registry,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for the completion and adoption of the Guide on the Implementation of a Security Rights Registry;[2]

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[1] United Nations publication, Sales No. E.09.V.12.

[2] See *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17), chap. IV.

2. *Requests* the Secretary-General to publish the Guide on the Implementation of a Security Rights Registry, including through electronic means, and to disseminate it broadly to Governments and other interested bodies such as national and international financial institutions and chambers of commerce;

3. *Recommends* that all States give favourable consideration to the Guide on the Implementation of a Security Rights Registry when revising relevant legislation, administrative regulations or guidelines and to the *Legislative Guide on Secured Transactions* of the Commission[1] when revising or adopting legislation relevant to secured transactions, and invites States that have used the Guides to advise the Commission accordingly;

4. *Also recommends* that all States continue to consider becoming parties to the United Nations Convention on the Assignment of Receivables in International Trade,[3] the principles of which are reflected in the *Legislative Guide on Secured Transactions* and the optional annex to which refers to the registration of data with regard to assignments.

[3] Resolution 56/81, annex.

Draft resolution IV
United Nations Commission on International Trade Law Rules on Transparency in Treaty-based Investor-State Arbitration and Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013)

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recognizing the value of arbitration as a method of settling disputes that may arise in the context of international relations and the wide use of arbitration for the settlement of treaty-based investor-State disputes,

Recalling its resolutions 31/98 of 15 December 1976 and 65/22 of 6 December 2010, in which it recommended the use of the Arbitration Rules of the United Nations Commission on International Trade Law,[1]

Bearing in mind that the Arbitration Rules are widely used for the settlement of treaty-based investor-State disputes,

Recognizing the need for provisions on transparency in the settlement of such treaty-based investor-State disputes to take account of the public interest involved in such arbitrations,

Believing that rules on transparency in treaty-based investor-State arbitration would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international investment disputes, increase transparency and accountability and promote good governance,

Noting that the Commission, at its forty-sixth session, adopted the Rules on Transparency in Treaty-based Investor-State Arbitration[2] and amended the Arbitration Rules as revised in 2010 to include, in a new article 1, paragraph 4, a reference to the Rules on Transparency,[3]

Noting also that the Rules on Transparency are available for use in investor-State arbitrations initiated under rules other than the Arbitration Rules or in ad hoc proceedings,

Noting further that the preparation of the Rules on Transparency was the subject of due deliberation in the Commission and that they benefited from consultations with Governments and interested intergovernmental and international non-governmental organizations,

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[1] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), chap. V, sect. C; and ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), chap. III and annex I.

[2] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), chap. III and annex I.

[3] Ibid., chap. III and annex II.

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for having prepared and adopted the Rules on Transparency in Treaty-based Investor-State Arbitration[2] and the Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013),[3] as annexed to the report of the Commission on the work of its forty-sixth session;[4]

2. *Requests* the Secretary-General to publish, including electronically, and disseminate broadly the text of the Rules on Transparency, both together with the Arbitration Rules (as revised in 2010, with new article 1, paragraph 4, as adopted in 2013) and as a stand-alone text, and to transmit them to Governments and organizations interested in the field of dispute settlement;

3. *Recommends* the use of the Rules on Transparency in relation to the settlement of investment disputes within the scope of their application as defined in article 1 of the Rules, and invites Member States that have chosen to include the Rules in their treaties to inform the Commission accordingly;

4. *Also recommends* that, subject to any provision in relevant treaties that may require a higher degree of transparency than that provided in the Rules on Transparency, the Rules be applied through appropriate mechanisms to investor-State arbitration initiated pursuant to treaties providing for the protection of investors or investments concluded before the date of coming into effect of the Rules, to the extent that such application is consistent with those treaties.

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[4] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 17* (A/68/17).

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Sixty-eighth session
Agenda item 80

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

Report of the Sixth Committee

Rapporteur: Mr. Tofig **Musayev** (Azerbaijan)

I. Introduction

1. The item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" was included in the provisional agenda of the sixty-eighth session of the General Assembly pursuant to Assembly resolution 67/91 of 14 December 2012.

2. At its 2nd plenary meeting, on 20 September 2013, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 11th, 12th, 27th and 28th meetings, on 16 and 17 October and 6 and 8 November 2013. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/68/SR.11, 12, 27 and 28).

4. For its consideration of the item, the Committee had before it the report of the Secretary-General (A/68/521).

II. Consideration of draft resolution A/C.6/68/L.14

5. At the 27th meeting, on 6 November, the representative of Ghana, on behalf of the Bureau, introduced a draft resolution entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law" (A/C.6/68/L.14) and orally revised operative paragraph 18 by replacing the words "Expresses its appreciation to Ethiopia and Thailand" with the words "Expresses its appreciation to Ethiopia for hosting and to Thailand" in the first line.

6. At its 28th meeting, on 8 November, the Committee adopted draft resolution A/C.6/68/L.14, as orally revised, without a vote (see para. 7).

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III. Recommendation of the Sixth Committee

7. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law

The General Assembly,

Recalling its resolution 2099 (XX) of 20 December 1965, in which the General Assembly established the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law to contribute towards a better knowledge of international law as a means of strengthening international peace and security and promoting friendly relations and cooperation among States,

Reaffirming that the Programme of Assistance is a core activity of the United Nations and that it has provided the foundation for the efforts of the United Nations to promote a better knowledge of international law for nearly half a century,

Recognizing the major contribution of the Programme of Assistance to the teaching and dissemination of international law for the benefit of lawyers in all countries, legal systems and regions of the world for almost half a century,

Emphasizing the important contribution of the Programme of Assistance, in particular the United Nations Regional Courses in International Law and the United Nations Audiovisual Library of International Law, to the furtherance of United Nations rule of law programmes and activities,

Reaffirming that the increasing demand for international law training and dissemination activities creates new challenges for the Programme of Assistance,

Recognizing the importance of the Programme of Assistance effectively reaching its beneficiaries, including with regard to languages, while bearing in mind limitations on available resources,

Taking note with appreciation of the report of the Secretary-General on the implementation of the Programme of Assistance[1] and the views of the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, which are contained in the report,[2]

Noting with concern that the activities of the Programme of Assistance, in particular the organization of the United Nations Regional Courses in International Law on a regular basis and the further development of the United Nations Audiovisual Library of International Law, cannot be sustained with the resources available under the current or the proposed programme budget, notwithstanding its resolutions 64/113 of 16 December 2009, 65/25 of 6 December 2010, 66/97 of 9 December 2011 and 67/91 of 14 December 2012,

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[1] A/68/521.

[2] Ibid., paras. 73 and 75-79.

Noting with regret that the United Nations Regional Course in International Law for Asia-Pacific for 2013 was cancelled owing to insufficient funds and that no United Nations Regional Course in International Law for Latin America and the Caribbean has been held in almost a decade,

Considering that international law should occupy an appropriate place in the teaching of legal disciplines at all universities,

Convinced that States, international and regional organizations, universities and institutions should be encouraged to give further support to the Programme of Assistance and to increase their activities to promote the teaching, study, dissemination and wider appreciation of international law, in particular those activities which are of special benefit to persons from developing countries,

Reaffirming that in the conduct of the Programme of Assistance it would be desirable to use as far as possible the resources and facilities made available by Member States, international and regional organizations, universities, institutions and others,

Reaffirming also the hope that, in appointing highly qualified lecturers for the seminars to be held within the framework of the fellowship programmes in international law, account would be taken of the need to secure the representation of major legal systems and balance among various geographical regions,

1. *Approves* the guidelines and recommendations contained in section III of the report of the Secretary-General to the General Assembly at its sixty-eighth session,[1] in particular those designed to strengthen and revitalize the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law in response to the increasing demand for international law training and dissemination activities;

2. *Authorizes* the Secretary-General to carry out the activities specified in his report in 2014 and 2015;

3. *Also authorizes* the Secretary-General to award a minimum of one scholarship in 2014 and a minimum of one scholarship in 2015 under the Hamilton Shirley Amerasinghe Memorial Fellowship on the Law of the Sea;

4. *Further authorizes* the Secretary-General to continue and further develop the United Nations Audiovisual Library of International Law as a major contribution to the teaching and dissemination of international law around the world and to continue to finance this activity from provisions in the regular budget as well as, when necessary, from voluntary financial contributions, which would be received as a result of the requests set out in paragraphs 21 and 22 below;

5. *Expresses its appreciation* to the Secretary-General for the activities conducted under the Programme of Assistance and, in particular, for the efforts to strengthen, expand and enhance the international law training and dissemination activities within the framework of the Programme of Assistance in 2013;

6. *Requests* the Secretary-General to consider admitting, for participation in the various components of the Programme of Assistance, candidates from countries willing to bear the entire cost of such participation;

7. *Reiterates its request* to the Secretary-General in accordance with General Assembly resolution 67/91, in particular paragraph 7 thereof, to provide to the

programme budget for the biennium 2014-2015 the resources necessary for the Programme of Assistance to ensure the continued effectiveness and further development of the Programme, in particular the organization of United Nations Regional Courses in International Law on a regular basis and the viability of the United Nations Audiovisual Library of International Law;

8. *Recognizes* the importance of the United Nations legal publications prepared by the Office of Legal Affairs of the Secretariat, and requests the Secretary-General to issue the publications referred to in his report in various formats, including hard copy publications, which are essential for developing countries;

9. *Notes with appreciation* the issuance of the *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice 2008-2012*, volume XXX of the *Reports of International Arbitral Awards* and the *United Nations Juridical Yearbook 2012*;

10. *Reiterates its request* that the Secretary-General issue the next volume of the *United Nations Legislative Series* containing materials on the responsibility of States for internationally wrongful acts;

11. *Once again welcomes* the efforts undertaken by the Office of Legal Affairs to bring up to date the United Nations legal publications, commends, in particular, the Codification Division of the Office of Legal Affairs for its desktop publishing initiative, which has greatly enhanced the timely issuance of its legal publications and has made possible the preparation of legal training materials, and requests that the necessary materials be made available to ensure the continuation of this successful initiative;

12. *Encourages* the Office of Legal Affairs to continue to maintain and expand its websites listed in the annex to the report of the Secretary-General as an invaluable tool for the dissemination of international law materials as well as for advanced legal research;

13. *Encourages* the use of interns and research assistants for the preparation of materials for the United Nations Audiovisual Library of International Law;

14. *Commends* the Codification Division for the cost-saving measures undertaken with regard to the International Law Fellowship Programme to maintain the number of fellowships available for this comprehensive international law training programme;

15. *Expresses its appreciation* to the Hague Academy of International Law for the valuable contribution it continues to make to the Programme of Assistance, which has enabled candidates under the International Law Fellowship Programme to attend and participate in the Fellowship Programme in conjunction with courses at the Academy;

16. *Notes with appreciation* the contributions of the Hague Academy to the teaching, study, dissemination and wider appreciation of international law, and calls upon Member States and interested organizations to give favourable consideration to the appeal of the Academy for a continuation of support and a possible increase in their financial contributions, to enable the Academy to carry out its activities, particularly those relating to the summer courses, regional courses and programmes

of the Centre for Studies and Research in International Law and International Relations;

17. *Welcomes* the efforts of the Codification Division to revitalize and conduct United Nations Regional Courses in International Law as an important training activity;

18. *Expresses its appreciation* to Ethiopia for hosting and to Thailand for agreeing to host the United Nations Regional Courses in International Law in 2013 and to Ethiopia, Thailand and Uruguay for agreeing to host the United Nations Regional Courses in International Law for Africa, for Asia-Pacific and, for the first time in almost a decade, for Latin America and the Caribbean in 2014 and 2015, and also expresses its appreciation to Costa Rica for its willingness to host this regional course in 2015;

19. *Expresses its appreciation* to the African Union for the valuable contribution it continues to make to the United Nations Regional Course in International Law for Africa, which has enabled participants to attend and participate in the Regional Course and the lectures at the African Union;

20. *Once again encourages* the Codification Division to cooperate with the African Institute of International Law, dedicated to offering higher learning and research in international law needed for the development of Africa, in the implementation of the relevant activities under the Programme of Assistance;

21. *Requests* the Secretary-General to continue to publicize the Programme of Assistance and periodically to invite Member States, universities, philanthropic foundations and other interested national and international institutions and organizations, as well as individuals, to make voluntary contributions towards the financing of the Programme or otherwise to assist in its implementation and possible expansion;

22. *Reiterates its request* to Member States and interested organizations, institutions and individuals to make voluntary contributions, inter alia, for the International Law Fellowship Programme and the United Nations Audiovisual Library of International Law;

23. *Urges*, in particular, all Member States and interested organizations, institutions and individuals to make voluntary contributions for the United Nations Regional Courses in International Law organized by the Codification Division as an important complement to the International Law Fellowship Programme, thus alleviating the burden on prospective host countries and making it possible to conduct the Regional Courses on a regular basis;

24. *Expresses its appreciation* to those Member States that have made voluntary contributions to support the Programme of Assistance;

25. *Requests* the Secretary-General to report to the General Assembly at its sixty-ninth session on the implementation of the Programme of Assistance in 2014 and, following consultations with the Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, to submit recommendations regarding the Programme in subsequent years;

26. *Concludes* that voluntary contributions have not proven to be an adequate method for funding activities of the Programme of Assistance specified in the report of the Secretary-General and in General Assembly resolution 67/91, in particular the United Nations Regional Courses in International Law and the United Nations Audiovisual Library of International Law,[3] and that, consequently, there is a need to provide more reliable funding for those activities, taking into account the conclusion of the Advisory Committee at its forty-eighth session;[4]

27. *Decides* to include in the provisional agenda of its sixty-ninth session the item entitled "United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law".

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[3] See also paragraph 34 of resolution 67/78.

[4] A/68/521, para. 78.

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Report of the International Law Commission on the work of its sixty-third and sixty-fifth sessions

Report of the Sixth Committee

Rapporteur: Mr. Tofig **Musayev** (Azerbaijan)

I. Introduction

1. The item entitled "Report of the International Law Commission on the work of its sixty-third and sixty-fifth sessions" was included in the provisional agenda of the sixty-eighth session of the General Assembly pursuant to Assembly resolution 67/92 of 14 December 2012.

2. At its 2nd plenary meeting, on 20 September 2013, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 17th to 26th and 29th meetings, from 28 to 30 October and 1, 4, 5 and 15 November 2013. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/68/SR.17-26 and 29).

4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its sixty-fifth session (A/68/10) and chapter IV, "Reservations to treaties" of the report of the Commission on the work of its sixty-third session (A/66/10 and Add.1).

5. The Chairman of the International Law Commission at its sixty-fifth session introduced the report of the Commission on the work of that session: chapters I to V and XII at the 17th meeting, on 28 October, and chapters VI to XI at the 23rd meeting, on 4 November. At the 19th meeting, on 30 October, the Chairman of the International Law Commission also introduced chapter IV of the report of the Commission on the work of its sixty-third session, dealing with "Reservations to treaties".

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II. Consideration of proposals

A. Draft resolution A/C.6/68/L.23

6. At the 29th meeting, on 15 November, the representative of Brazil, on behalf of the Bureau, introduced a draft resolution entitled "Reservations to treaties" (A/C.6/68/L.23).

7. At the same meeting, the Committee adopted draft resolution A/C.6/68/L.23 without a vote (see para. 11, draft resolution I).

B. Draft resolution A/C.6/68/L.24

8. At the 29th meeting, on 15 November, the representative of Brazil, on behalf of the Bureau, introduced a draft resolution entitled "Report of the International Law Commission on the work of its sixty-fifth session" (A/C.6/68/L.24).

9. At the same meeting, the Secretary of the Committee made a statement on the financial implications of the draft resolution.

10. Also at the same meeting, the Committee adopted draft resolution A/C.6/68/L.24 without a vote (see para. 11, draft resolution II).

III. Recommendation of the Sixth Committee

11. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I
Reservations to treaties

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its sixty-third session,[1] which contains the Guide to Practice on Reservations to Treaties, including an annex on the reservations dialogue,

Noting that the Commission recommended that the General Assembly take note of the Guide to Practice and ensure its widest possible dissemination,[2]

Taking note of the recommendation of the Commission contained in paragraph 73 of its report,

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of reservations to treaties is of major importance in the relations of States,

Recognizing the role that reservations to treaties may play in achieving a satisfactory balance between the objectives of safeguarding the integrity of multilateral treaties and facilitating wide participation therein,

1. *Welcomes* the successful completion of the work of the International Law Commission on the subject of reservations to treaties and its adoption of the Guide to Practice on Reservations to Treaties, including the guidelines and a detailed commentary thereto;[1]

2. *Expresses* its appreciation to the Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the Guide to Practice, presented by the Commission, including the guidelines, the text of which is annexed to the present resolution, and encourages its widest possible dissemination.

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[1] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10 and Add.1).

[2] Ibid., A/66/10, para. 72.

Annex
Text of the guidelines constituting the Guide to Practice on Reservations to Treaties

1. Definitions

1.1 Definition of reservations

1. "Reservation" means a unilateral statement, however phrased or named, made by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or organization purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State or to that international organization.

2. Paragraph 1 is to be interpreted as including reservations which purport to exclude or to modify the legal effect of certain provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to the State or to the international organization which formulates the reservation.

1.1.1 Statements purporting to limit the obligations of their author

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which its author purports to limit the obligations imposed on it by the treaty, constitutes a reservation.

1.1.2 Statements purporting to discharge an obligation by equivalent means

A unilateral statement formulated by a State or an international organization at the time when that State or that organization expresses its consent to be bound by a treaty, by which that State or that organization purports to discharge an obligation pursuant to the treaty in a manner different from, but considered by the author of the statement to be equivalent to that imposed by the treaty, constitutes a reservation.

1.1.3 Reservations relating to the territorial application of the treaty

A unilateral statement by which a State purports to exclude the application of some provisions of a treaty, or of the treaty as a whole with respect to certain specific aspects, to a territory to which they would be applicable in the absence of such a statement constitutes a reservation.

1.1.4 Reservations formulated when extending the territorial application of a treaty

A unilateral statement by which a State, when extending the application of a treaty to a territory, purports to exclude or to modify the legal effect of certain provisions of the treaty in relation to that territory constitutes a reservation.

1.1.5 Reservations formulated jointly

The joint formulation of a reservation by several States or international organizations does not affect the unilateral character of that reservation.

1.1.6 Reservations formulated by virtue of clauses expressly authorizing the exclusion or the modification of certain provisions of a treaty

A unilateral statement made by a State or an international organization when that State or organization expresses its consent to be bound by a treaty, in accordance with a clause expressly authorizing the parties or some of them to exclude or to modify the legal effect of certain provisions of the treaty with regard to the party that has made the statement, constitutes a reservation expressly authorized by the treaty.

1.2 Definition of interpretative declarations

"Interpretative declaration" means a unilateral statement, however phrased or named, made by a State or an international organization, whereby that State or that organization purports to specify or clarify the meaning or scope of a treaty or of certain of its provisions.

1.2.1 Interpretative declarations formulated jointly

The joint formulation of an interpretative declaration by several States or international organizations does not affect the unilateral character of that interpretative declaration.

1.3 Distinction between reservations and interpretative declarations

The character of a unilateral statement as a reservation or as an interpretative declaration is determined by the legal effect that its author purports to produce.

1.3.1 Method of determining the distinction between reservations and interpretative declarations

To determine whether a unilateral statement formulated by a State or an international organization in respect of a treaty is a reservation or an interpretative declaration, the statement should be interpreted in good faith in accordance with the ordinary meaning to be given to its terms, with a view to identifying therefrom the intention of its author, in light of the treaty to which it refers.

1.3.2 Phrasing and name

The phrasing or name of a unilateral statement provides an indication of the purported legal effect.

1.3.3 Formulation of a unilateral statement when a reservation is prohibited

When a treaty prohibits reservations to all or certain of its provisions, a unilateral statement formulated in respect of those provisions by a State or an international organization shall be presumed not to constitute a reservation. Such a statement nevertheless constitutes a reservation if it purports to exclude or modify the legal effect of certain provisions of the treaty, or of the treaty as a whole with respect to certain specific aspects, in their application to its author.

1.4 Conditional interpretative declarations

1. A conditional interpretative declaration is a unilateral statement formulated by a State or an international organization when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, or by a State when making a notification of succession to a treaty, whereby the State or international organization subjects its consent to be bound by the treaty to a specific interpretation of the treaty or of certain provisions thereof.

2. Conditional interpretative declarations are subject to the rules applicable to reservations.

1.5 Unilateral statements other than reservations and interpretative declarations

Unilateral statements formulated in relation to a treaty which are not reservations nor interpretative declarations (including conditional interpretative declarations) are outside the scope of the present Guide to Practice.

1.5.1 Statements of non-recognition

A unilateral statement by which a State indicates that its participation in a treaty does not imply recognition of an entity which it does not recognize is outside the scope of the present Guide to Practice even if it purports to exclude the application of the treaty between the declaring State and the non-recognized entity.

1.5.2 Statements concerning modalities of implementation of a treaty at the internal level

A unilateral statement formulated by a State or an international organization whereby that State or that organization indicates the manner in which it intends to implement a treaty at the internal level, without affecting its rights and obligations towards the other contracting States or contracting organizations, is outside the scope of the present Guide to Practice.

1.5.3 Unilateral statements made under a clause providing for options

1. A unilateral statement made by a State or an international organization, in accordance with a clause in a treaty permitting the parties to accept an obligation that is not otherwise imposed by the treaty, or permitting them to choose between two or more provisions of the treaty, is outside the scope of the present Guide to Practice.

2. A restriction or condition contained in a statement by which a State or an international organization accepts, by virtue of a clause in a treaty, an obligation that is not otherwise imposed by the treaty does not constitute a reservation.

1.6 Unilateral statements in respect of bilateral treaties

1.6.1 "Reservations" to bilateral treaties

A unilateral statement, however phrased or named, formulated by a State or an international organization after initialling or signature but prior to entry into force of a bilateral treaty, by which that State or that organization purports to obtain from the other party a modification of the provisions of the treaty, does not constitute a reservation within the meaning of the present Guide to Practice.

1.6.2 Interpretative declarations in respect of bilateral treaties

Guidelines 1.2 and 1.4 are applicable to interpretative declarations in respect of both multilateral and bilateral treaties.

1.6.3 Legal effect of acceptance of an interpretative declaration made in respect of a bilateral treaty by the other party

The interpretation resulting from an interpretative declaration made in respect of a bilateral treaty by a State or an international organization party to the treaty and accepted by the other party constitutes an authentic interpretation of that treaty.

1.7 Alternatives to reservations and interpretative declarations

1.7.1 Alternatives to reservations

In order to achieve results comparable to those effected by reservations, States or international organizations may also have recourse to alternative procedures, such as:

- the insertion in the treaty of a clause purporting to limit its scope or application;
- the conclusion of an agreement, under a specific provision of a treaty, by which two or more States or international organizations purport to exclude or modify the legal effect of certain provisions of the treaty as between themselves.

1.7.2 Alternatives to interpretative declarations

In order to specify or clarify the meaning or scope of a treaty or certain of its provisions, States or international organizations may also have recourse to procedures other than interpretative declarations, such as:

- the insertion in the treaty of provisions purporting to interpret the treaty;
- the conclusion of a supplementary agreement to the same end, simultaneously or subsequently to the conclusion of the treaty.

1.8 Scope of definitions

The definitions of unilateral statements included in the present Part are without prejudice to the validity and legal effects of such statements under the rules applicable to them.

2. Procedure

2.1 Form and notification of reservations

2.1.1 Form of reservations

A reservation must be formulated in writing.

2.1.2 Statement of reasons for reservations

A reservation should, to the extent possible, indicate the reasons why it is being formulated.

2.1.3 Representation for the purpose of formulating a reservation at the international level

1. Subject to the usual practices followed in international organizations which are depositaries of treaties, a person is considered as representing a State or an international organization for the purpose of formulating a reservation if:

(a) that person produces appropriate full powers for the purposes of adopting or authenticating the text of the treaty with regard to which the reservation is formulated or expressing the consent of the State or organization to be bound by the treaty; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State or the international organization for such purposes without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing their State for the purpose of formulating a reservation at the international level:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs;

(b) representatives accredited by States to an international conference, for the purpose of formulating a reservation to a treaty adopted at that conference;

(c) representatives accredited by States to an international organization or one of its organs, for the purpose of formulating a reservation to a treaty adopted in that organization or organ;

(d) heads of permanent missions to an international organization, for the purpose of formulating a reservation to a treaty between the accrediting States and that organization.

2.1.4 Absence of consequences at the international level of the violation of internal rules regarding the formulation of reservations

1. The competent authority and the procedure to be followed at the internal level for formulating a reservation are determined by the internal law of each State or the relevant rules of each international organization.

2. A State or an international organization may not invoke the fact that a reservation has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating reservations for the purpose of invalidating the reservation.

2.1.5 Communication of reservations

1. A reservation must be communicated in writing to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty.

2. A reservation to a treaty in force which is the constituent instrument of an international organization must also be communicated to such organization.

2.1.6 Procedure for communication of reservations

1. Unless otherwise provided in the treaty or agreed by the contracting States and contracting organizations, the communication of a reservation to a treaty shall be transmitted:

(i) if there is no depositary, directly by the author of the reservation to the contracting States and contracting organizations and other States and international organizations entitled to become parties to the treaty; or

(ii) if there is a depositary, to the latter, which shall notify the States and international organizations for which it is intended as soon as possible.

2. The communication of a reservation shall be considered as having been made with regard to a State or an international organization only upon receipt by that State or organization.

3. The communication of a reservation to a treaty by means other than a diplomatic note or depositary notification, such as electronic mail or facsimile, must be confirmed within an appropriate period of time by such a note or notification. In such case, the reservation is considered as having been formulated at the date of the initial communication.

2.1.7 Functions of depositaries

1. The depositary shall examine whether a reservation to a treaty formulated by a State or an international organization is in due and proper form and, if need be, bring the matter to the attention of the State or international organization concerned.

2. In the event of any difference appearing between a State or an international organization and the depositary as to the performance of the latter's functions, the depositary shall bring the question to the attention of:

(a) the signatory States and organizations and the contracting States and contracting organizations; or

(b) where appropriate, the competent organ of the international organization concerned.

2.2 Confirmation of reservations

2.2.1 Formal confirmation of reservations formulated when signing a treaty

If formulated when signing a treaty subject to ratification, act of formal confirmation, acceptance or approval, a reservation must be formally confirmed by the reserving State or international organization when expressing its consent to be bound by the treaty. In such a case, the reservation shall be considered as having been formulated on the date of its confirmation.

2.2.2 Instances of non-requirement of confirmation of reservations formulated when signing a treaty

A reservation formulated when signing a treaty does not require subsequent confirmation when a State or an international organization expresses by signature its consent to be bound by the treaty.

2.2.3 Reservations formulated upon signature when a treaty expressly so provides

Where the treaty expressly provides that a State or an international organization may formulate a reservation when signing the treaty, such a reservation does not require formal confirmation by the reserving State or international organization when expressing its consent to be bound by the treaty.

2.2.4 Form of formal confirmation of reservations

The formal confirmation of a reservation must be made in writing.

2.3 Late formulation of reservations

A State or an international organization may not formulate a reservation to a treaty after expressing its consent to be bound by the treaty, unless the treaty otherwise provides or none of the other contracting States and contracting organizations opposes the late formulation of the reservation.

2.3.1 Acceptance of the late formulation of a reservation

Unless the treaty otherwise provides or the well-established practice followed by the depositary differs, the late formulation of a reservation shall only be deemed to have been accepted if no contracting State or contracting organization has opposed such formulation after the expiry of the twelve-month period following the date on which notification was received.

2.3.2 Time period for formulating an objection to a reservation that is formulated late

An objection to a reservation that is formulated late must be made within twelve months of the acceptance, in accordance with guideline 2.3.1, of the late formulation of the reservation.

2.3.3 Limits to the possibility of excluding or modifying the legal effect of a treaty by means other than reservations

A contracting State or a contracting organization cannot exclude or modify the legal effect of provisions of the treaty by:

(a) the interpretation of an earlier reservation; or

(b) a unilateral statement made subsequently under a clause providing for options.

2.3.4 Widening of the scope of a reservation

The modification of an existing reservation for the purpose of widening its scope is subject to the rules applicable to the late formulation of a reservation. If such a modification is opposed, the initial reservation remains unchanged.

2.4 Procedure for interpretative declarations

2.4.1 Form of interpretative declarations

An interpretative declaration should preferably be formulated in writing.

2.4.2 Representation for the purpose of formulating interpretative declarations

An interpretative declaration must be formulated by a person who is considered as representing a State or an international organization for the purpose of adopting or authenticating the text of a treaty or expressing the consent of the State or international organization to be bound by a treaty.

2.4.3 Absence of consequences at the international level of the violation of internal rules regarding the formulation of interpretative declarations

1. The competent authority and the procedure to be followed at the internal level for formulating an interpretative declaration are determined by the internal law of each State or the relevant rules of each international organization.

2. A State or an international organization may not invoke the fact that an interpretative declaration has been formulated in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for formulating interpretative declarations for the purpose of invalidating the declaration.

2.4.4 Time at which an interpretative declaration may be formulated

Without prejudice to the provisions of guidelines 1.4 and 2.4.7, an interpretative declaration may be formulated at any time.

2.4.5 Communication of interpretative declarations

The communication of written interpretative declarations should follow the procedure established in guidelines 2.1.5, 2.1.6 and 2.1.7.

2.4.6 Non-requirement of confirmation of interpretative declarations formulated when signing a treaty

An interpretative declaration formulated when signing a treaty does not require subsequent confirmation when a State or an international organization expresses its consent to be bound by the treaty.

2.4.7 Late formulation of an interpretative declaration

Where a treaty provides that an interpretative declaration may be formulated only at specified times, a State or an international organization may not formulate an interpretative declaration concerning that treaty subsequently, unless none of the other contracting States and contracting organizations objects to the late formulation of the interpretative declaration.

2.4.8 Modification of an interpretative declaration

Unless the treaty otherwise provides, an interpretative declaration may be modified at any time.

2.5 Withdrawal and modification of reservations and interpretative declarations

2.5.1 Withdrawal of reservations

Unless the treaty otherwise provides, a reservation may be withdrawn at any time without the consent of a State or of an international organization which has accepted the reservation being required for its withdrawal.

2.5.2 Form of withdrawal

The withdrawal of a reservation must be formulated in writing.

2.5.3 Periodic review of the usefulness of reservations

1. States or international organizations which have formulated one or more reservations to a treaty should undertake a periodic review of such reservations and consider withdrawing those which no longer serve their purpose.

2. In such a review, States and international organizations should devote special attention to the aim of preserving the integrity of multilateral treaties and, where relevant, consider the usefulness of retaining the reservations, in particular in relation to developments in their internal law since the reservations were formulated.

2.5.4 Representation for the purpose of withdrawing a reservation at the international level

1. Subject to the usual practices followed in international organizations which are depositaries of treaties, a person is considered as representing a State or an international organization for the purpose of withdrawing a reservation made on behalf of a State or an international organization if:

(a) that person produces appropriate full powers for the purpose of that withdrawal; or

(b) it appears from practice or from other circumstances that it was the intention of the States and international organizations concerned to consider that person as representing the State or the international organization for such purpose without having to produce full powers.

2. In virtue of their functions and without having to produce full powers, the following are considered as representing a State for the purpose of withdrawing a reservation at the international level on behalf of that State:

(a) Heads of State, Heads of Government and Ministers for Foreign Affairs;

(b) representatives accredited by States to an international organization or one of its organs, for the purpose of withdrawing a reservation to a treaty adopted in that organization or organ;

(c) heads of permanent missions to an international organization, for the purpose of withdrawing a reservation to a treaty between the accrediting States and that organization.

2.5.5 Absence of consequences at the international level of the violation of internal rules regarding the withdrawal of reservations

1. The competent authority and the procedure to be followed at the internal level for withdrawing a reservation are determined by the internal law of each State or the relevant rules of each international organization.

2. A State or an international organization may not invoke the fact that a reservation has been withdrawn in violation of a provision of the internal law of that State or the rules of that organization regarding competence and the procedure for the withdrawal of reservations for the purpose of invalidating the withdrawal.

2.5.6 Communication of withdrawal of a reservation

The procedure for communicating the withdrawal of a reservation follows the rules applicable to the communication of reservations contained in guidelines 2.1.5, 2.1.6 and 2.1.7.

2.5.7 Effects of withdrawal of a reservation

1. The withdrawal of a reservation entails the full application of the provisions to which the reservation relates in the relations between the State or international organization which withdraws the reservation and all the other parties, whether they had accepted the reservation or objected to it.

2. The withdrawal of a reservation entails the entry into force of the treaty in the relations between the State or international organization which withdraws the reservation and a State or international organization which had objected to the reservation and opposed the entry into force of the treaty between itself and the reserving State or international organization by reason of that reservation.

2.5.8 Effective date of withdrawal of a reservation

Unless the treaty otherwise provides, or it is otherwise agreed, the withdrawal of a reservation becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization.

2.5.9 Cases in which the author of a reservation may set the effective date of withdrawal of the reservation

The withdrawal of a reservation becomes operative on the date set by the State or international organization which withdraws the reservation, where:

(a) that date is later than the date on which the other contracting States or contracting organizations received notification of it; or

(b) the withdrawal does not add to the rights of the withdrawing State or international organization, in relation to the other contracting States or contracting organizations.

2.5.10 Partial withdrawal of reservations

1. The partial withdrawal of a reservation limits the legal effect of the reservation and achieves a more complete application of the provisions of the treaty, or of the

treaty as a whole, in the relations between the withdrawing State or international organization and the other parties to the treaty.

2. The partial withdrawal of a reservation is subject to the same rules on form and procedure as a total withdrawal and becomes operative on the same conditions.

2.5.11 Effect of a partial withdrawal of a reservation

1. The partial withdrawal of a reservation modifies the legal effect of the reservation to the extent provided by the new formulation of the reservation. Any objection formulated to the reservation continues to have effect as long as its author does not withdraw it, insofar as the objection does not apply exclusively to that part of the reservation which has been withdrawn.

2. No new objection may be formulated to the reservation resulting from the partial withdrawal, unless that partial withdrawal has a discriminatory effect.

2.5.12 Withdrawal of interpretative declarations

An interpretative declaration may be withdrawn at any time by an authority considered as representing the State or international organization for that purpose, following the same procedure applicable to its formulation.

2.6 Formulation of objections

2.6.1 Definition of objections to reservations

"Objection" means a unilateral statement, however phrased or named, made by a State or an international organization in response to a reservation formulated by another State or international organization, whereby the former State or organization purports to preclude the reservation from having its intended effects or otherwise opposes the reservation.

2.6.2 Right to formulate objections

A State or an international organization may formulate an objection to a reservation irrespective of the permissibility of the reservation.

2.6.3 Author of an objection

An objection to a reservation may be formulated by:

(i) any contracting State or contracting organization; and

(ii) any State or international organization that is entitled to become a party to the treaty, in which case the objection does not produce any legal effect until the State or international organization has expressed its consent to be bound by the treaty.

2.6.4 Objections formulated jointly

The joint formulation of an objection by several States or international organizations does not affect the unilateral character of that objection.

2.6.5 Form of objections

An objection must be formulated in writing.

2.6.6 Right to oppose the entry into force of the treaty *vis-à-vis* the author of the reservation

A State or an international organization that formulates an objection to a reservation may oppose the entry into force of the treaty as between itself and the author of the reservation.

2.6.7 Expression of intention to preclude the entry into force of the treaty

When a State or an international organization formulating an objection to a reservation intends to preclude the entry into force of the treaty as between itself and the reserving State or international organization, it shall definitely express its intention before the treaty would otherwise enter into force between them.

2.6.8 Procedure for the formulation of objections

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 are applicable *mutatis mutandis* to objections.

2.6.9 Statement of reasons for objections

An objection should, to the extent possible, indicate the reasons why it is being formulated.

2.6.10 Non-requirement of confirmation of an objection formulated prior to formal confirmation of a reservation

An objection to a reservation formulated by a State or an international organization prior to confirmation of the reservation in accordance with guideline 2.2.1 does not itself require confirmation.

2.6.11 Confirmation of an objection formulated prior to the expression of consent to be bound by a treaty

An objection formulated prior to the expression of consent to be bound by the treaty does not need to be formally confirmed by the objecting State or international organization at the time it expresses its consent to be bound if that State or that organization was a signatory to the treaty when it formulated the objection; it must be confirmed if the State or international organization had not signed the treaty.

2.6.12 Time period for formulating objections

Unless the treaty otherwise provides, a State or an international organization may formulate an objection to a reservation within a period of twelve months after it was notified of the reservation or by the date on which such State or international organization expresses its consent to be bound by the treaty, whichever is later.

2.6.13 Objections formulated late

An objection to a reservation formulated after the end of the time period specified in guideline 2.6.12 does not produce all the legal effects of an objection formulated within that time period.

2.7 Withdrawal and modification of objections to reservations

2.7.1 Withdrawal of objections to reservations

Unless the treaty otherwise provides, an objection to a reservation may be withdrawn at any time.

2.7.2 Form of withdrawal of objections to reservations

The withdrawal of an objection to a reservation must be formulated in writing.

2.7.3 Formulation and communication of the withdrawal of objections to reservations

Guidelines 2.5.4, 2.5.5 and 2.5.6 are applicable *mutatis mutandis* to the withdrawal of objections to reservations.

2.7.4 Effect on reservation of withdrawal of an objection

A State or an international organization that withdraws an objection formulated to a reservation is presumed to have accepted that reservation.

2.7.5 Effective date of withdrawal of an objection

Unless the treaty otherwise provides, or it is otherwise agreed, the withdrawal of an objection to a reservation becomes operative only when notice of it has been received by the State or international organization which formulated the reservation.

2.7.6 Cases in which the author of an objection may set the effective date of withdrawal of the objection

The withdrawal of an objection becomes operative on the date set by its author where that date is later than the date on which the reserving State or international organization received notice of it.

2.7.7 Partial withdrawal of an objection

1. Unless the treaty otherwise provides, a State or an international organization may partially withdraw an objection to a reservation.

2. The partial withdrawal of an objection is subject to the same rules on form and procedure as a total withdrawal and becomes operative on the same conditions.

2.7.8 Effect of a partial withdrawal of an objection

The partial withdrawal modifies the legal effects of the objection on the treaty relations between the author of the objection and the author of the reservation to the extent provided by the new formulation of the objection.

2.7.9 Widening of the scope of an objection to a reservation

1. A State or an international organization which has made an objection to a reservation may widen the scope of that objection during the time period referred to in guideline 2.6.12.

2. Such a widening of the scope of the objection cannot have an effect on the existence of treaty relations between the author of the reservation and the author of the objection.

2.8 Formulation of acceptances of reservations

2.8.1 Forms of acceptance of reservations

The acceptance of a reservation may arise from a unilateral statement to this effect or from silence of a contracting State or contracting organization during the periods specified in guideline 2.6.12.

2.8.2 Tacit acceptance of reservations

Unless the treaty otherwise provides, a reservation is considered to have been accepted by a State or an international organization if it shall have raised no objection to the reservation within the time period provided for in guideline 2.6.12.

2.8.3 Express acceptance of reservations

A State or an international organization may, at any time, expressly accept a reservation formulated by another State or international organization.

2.8.4 Form of express acceptance of reservations

The express acceptance of a reservation must be formulated in writing.

2.8.5 Procedure for formulating express acceptance of reservations

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 apply *mutatis mutandis* to express acceptances.

2.8.6 Non-requirement of confirmation of an acceptance formulated prior to formal confirmation of a reservation

An express acceptance of a reservation formulated by a State or an international organization prior to confirmation of the reservation in accordance with guideline 2.2.1 does not itself require confirmation.

2.8.7 Unanimous acceptance of reservations

In the event of a reservation requiring unanimous acceptance by some or all States or international organizations which are parties or entitled to become parties to the treaty, such acceptance, once obtained, is final.

2.8.8 Acceptance of a reservation to the constituent instrument of an international organization

When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.

2.8.9 Organ competent to accept a reservation to a constituent instrument

Subject to the rules of the organization, competence to accept a reservation to a constituent instrument of an international organization belongs to the organ competent to:

- decide on the admission of a member to the organization; or
- amend the constituent instrument; or
- interpret this instrument.

2.8.10 Modalities of the acceptance of a reservation to a constituent instrument

1. Subject to the rules of the organization, the acceptance by the competent organ of the organization shall not be tacit. However, the admission of the State or the international organization which is the author of the reservation is tantamount to the acceptance of that reservation.

2. For the purposes of the acceptance of a reservation to the constituent instrument of an international organization, the individual acceptance of the reservation by States or international organizations that are members of the organization is not required.

2.8.11 Acceptance of a reservation to a constituent instrument that has not yet entered into force

In the case set forth in guideline 2.8.8 and where the constituent instrument has not yet entered into force, a reservation is considered to have been accepted if no signatory State or signatory international organization has raised an objection to that reservation within a period of twelve months after they were notified of that reservation. Such a unanimous acceptance, once obtained, is final.

2.8.12 Reaction by a member of an international organization to a reservation to its constituent instrument

Guideline 2.8.10 does not preclude States or international organizations that are members of an international organization from taking a position on the permissibility or appropriateness of a reservation to a constituent instrument of the organization. Such an opinion is in itself devoid of legal effects.

2.8.13 Final nature of acceptance of a reservation

The acceptance of a reservation cannot be withdrawn or amended.

2.9 Formulation of reactions to interpretative declarations

2.9.1 Approval of an interpretative declaration

"Approval" of an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization expresses agreement with the interpretation formulated in that declaration.

2.9.2 Opposition to an interpretative declaration

"Opposition" to an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization disagrees with the interpretation formulated in the interpretative declaration, including by formulating an alternative interpretation.

2.9.3 Recharacterization of an interpretative declaration

1. "Recharacterization" of an interpretative declaration means a unilateral statement made by a State or an international organization in reaction to an interpretative declaration in respect of a treaty formulated by another State or another international organization, whereby the former State or organization purports to treat the declaration as a reservation.

2. A State or an international organization that intends to treat an interpretative declaration as a reservation should take into account guidelines 1.3 to 1.3.3.

2.9.4 Right to formulate approval or opposition, or to recharacterize

An approval, opposition or recharacterization in respect of an interpretative declaration may be formulated at any time by any contracting State or any contracting organization and by any State or any international organization that is entitled to become a party to the treaty.

2.9.5 Form of approval, opposition and recharacterization

An approval, opposition or recharacterization in respect of an interpretative declaration should preferably be formulated in writing.

2.9.6 Statement of reasons for approval, opposition and recharacterization

An approval, opposition or recharacterization in respect of an interpretative declaration should, to the extent possible, indicate the reasons why it is being formulated.

2.9.7 Formulation and communication of approval, opposition or recharacterization

Guidelines 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 are applicable *mutatis mutandis* to an approval, opposition or recharacterization in respect of an interpretative declaration.

2.9.8 Non-presumption of approval or opposition

1. An approval of, or an opposition to, an interpretative declaration shall not be presumed.

2. Notwithstanding guidelines 2.9.1 and 2.9.2, an approval of an interpretative declaration or an opposition thereto may be inferred, in exceptional cases, from the conduct of the States or international organizations concerned, taking into account all relevant circumstances.

2.9.9 Silence with respect to an interpretative declaration

An approval of an interpretative declaration shall not be inferred from the mere silence of a State or an international organization.

3. Permissibility of reservations and interpretative declarations

3.1 Permissible reservations

A State or an international organization may, when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, formulate a reservation unless:

(a) the reservation is prohibited by the treaty;

(b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or

(c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.

3.1.1 Reservations prohibited by the treaty

A reservation is prohibited by the treaty if it contains a provision:

(a) prohibiting all reservations;

(b) prohibiting reservations to specified provisions to which the reservation in question relates; or

(c) prohibiting certain categories of reservations including the reservation in question.

3.1.2 Definition of specified reservations

For the purposes of guideline 3.1, the expression "specified reservations" means reservations that are expressly envisaged in the treaty to certain provisions of the treaty or to the treaty as a whole with respect to certain specific aspects.

3.1.3 Permissibility of reservations not prohibited by the treaty

Where the treaty prohibits the formulation of certain reservations, a reservation which is not prohibited by the treaty may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

3.1.4 Permissibility of specified reservations

Where the treaty envisages the formulation of specified reservations without defining their content, a reservation may be formulated by a State or an international organization only if it is not incompatible with the object and purpose of the treaty.

3.1.5 Incompatibility of a reservation with the object and purpose of the treaty

A reservation is incompatible with the object and purpose of the treaty if it affects an essential element of the treaty that is necessary to its general tenour, in such a way that the reservation impairs the *raison d'être* of the treaty.

3.1.5.1 Determination of the object and purpose of the treaty

The object and purpose of the treaty is to be determined in good faith, taking account of the terms of the treaty in their context, in particular the title and the preamble of the treaty. Recourse may also be had to the preparatory work of the treaty and the circumstances of its conclusion and, where appropriate, the subsequent practice of the parties.

3.1.5.2 Vague or general reservations

A reservation shall be worded in such a way as to allow its meaning to be understood, in order to assess in particular its compatibility with the object and purpose of the treaty.

3.1.5.3 Reservations to a provision reflecting a customary rule

The fact that a treaty provision reflects a rule of customary international law does not in itself constitute an obstacle to the formulation of a reservation to that provision.

3.1.5.4 Reservations to provisions concerning rights from which no derogation is permissible under any circumstances

A State or an international organization may not formulate a reservation to a treaty provision concerning rights from which no derogation is permissible under any circumstances, unless the reservation in question is compatible with the essential rights and obligations arising out of that treaty. In assessing that compatibility, account shall be taken of the importance which the parties have conferred upon the rights at issue by making them non-derogable.

3.1.5.5 Reservations relating to internal law

A reservation by which a State or an international organization purports to exclude or to modify the legal effect of certain provisions of a treaty or of the treaty as a whole in order to preserve the integrity of specific rules of the internal law of that State or of specific rules of that organization in force at the time of the formulation of the reservation may be formulated only insofar as it does not affect an essential element of the treaty nor its general tenour.

3.1.5.6 Reservations to treaties containing numerous interdependent rights and obligations

To assess the compatibility of a reservation with the object and purpose of a treaty containing numerous interdependent rights and obligations, account shall be taken of that interdependence as well as the importance that the provision to which the reservation relates has within the general tenour of the treaty, and the extent of the impact that the reservation has on the treaty.

3.1.5.7 Reservations to treaty provisions concerning dispute settlement or the monitoring of the implementation of the treaty

A reservation to a treaty provision concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty, unless:

(i) the reservation purports to exclude or modify the legal effect of a provision of the treaty essential to its *raison d'être*; or

(ii) the reservation has the effect of excluding the reserving State or international organization from a dispute settlement or treaty implementation monitoring mechanism with respect to a treaty provision that it has previously accepted, if the very purpose of the treaty is to put such a mechanism into effect.

3.2 Assessment of the permissibility of reservations

The following may assess, within their respective competences, the permissibility of reservations to a treaty formulated by a State or an international organization:

- contracting States or contracting organizations;
- dispute settlement bodies;
- treaty monitoring bodies.

3.2.1 Competence of the treaty monitoring bodies to assess the permissibility of reservations

1. A treaty monitoring body may, for the purpose of discharging the functions entrusted to it, assess the permissibility of reservations formulated by a State or an international organization.

2. The assessment made by such a body in the exercise of this competence has no greater legal effect than that of the act which contains it.

3.2.2 Specification of the competence of treaty monitoring bodies to assess the permissibility of reservations

When providing bodies with the competence to monitor the application of treaties, States or international organizations should specify, where appropriate, the nature and the limits of the competence of such bodies to assess the permissibility of reservations.

3.2.3 Consideration of the assessments of treaty monitoring bodies

States and international organizations that have formulated reservations to a treaty establishing a treaty monitoring body shall give consideration to that body's assessment of the permissibility of the reservations.

3.2.4 Bodies competent to assess the permissibility of reservations in the event of the establishment of a treaty monitoring body

When a treaty establishes a treaty monitoring body, the competence of that body is without prejudice to the competence of the contracting States or contracting organizations to assess the permissibility of reservations to that treaty, or to that of dispute settlement bodies competent to interpret or apply the treaty.

3.2.5 Competence of dispute settlement bodies to assess the permissibility of reservations

When a dispute settlement body is competent to adopt decisions binding upon the parties to a dispute, and the assessment of the permissibility of a reservation is necessary for the discharge of such competence by that body, such assessment is, as an element of the decision, legally binding upon the parties.

3.3 Consequences of the non-permissibility of a reservation

3.3.1 Irrelevance of distinction among the grounds for non-permissibility

A reservation formulated notwithstanding a prohibition arising from the provisions of the treaty or notwithstanding its incompatibility with the object and purpose of the treaty is impermissible, without there being any need to distinguish between the consequences of these grounds for non-permissibility.

3.3.2 Non-permissibility of reservations and international responsibility

The formulation of an impermissible reservation produces its consequences pursuant to the law of treaties and does not engage the international responsibility of the State or international organization which has formulated it.

3.3.3 Absence of effect of individual acceptance of a reservation on the permissibility of the reservation

Acceptance of an impermissible reservation by a contracting State or by a contracting organization shall not affect the impermissibility of the reservation.

3.4 Permissibility of reactions to reservations

3.4.1 Permissibility of the acceptance of a reservation

Acceptance of a reservation is not subject to any condition of permissibility.

3.4.2 Permissibility of an objection to a reservation

An objection to a reservation by which a State or an international organization purports to exclude in its relations with the author of the reservation the application of provisions of the treaty to which the reservation does not relate is only permissible if:

(1) the provisions thus excluded have a sufficient link with the provisions to which the reservation relates; and

(2) the objection would not defeat the object and purpose of the treaty in the relations between the author of the reservation and the author of the objection.

3.5 Permissibility of an interpretative declaration

A State or an international organization may formulate an interpretative declaration unless the interpretative declaration is prohibited by the treaty.

3.5.1 Permissibility of an interpretative declaration which is in fact a reservation

If a unilateral statement which appears to be an interpretative declaration is in fact a reservation, its permissibility must be assessed in accordance with the provisions of guidelines 3.1 to 3.1.5.7.

3.6 Permissibility of reactions to interpretative declarations

An approval of, opposition to, or recharacterization of, an interpretative declaration shall not be subject to any conditions for permissibility.

4. Legal effects of reservations and interpretative declarations

4.1 Establishment of a reservation with regard to another State or international organization

A reservation formulated by a State or an international organization is established with regard to a contracting State or a contracting organization if it is permissible and was formulated in accordance with the required form and procedures, and if that contracting State or contracting organization has accepted it.

4.1.1 Establishment of a reservation expressly authorized by a treaty

1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States and contracting organizations, unless the treaty so provides.

2. A reservation expressly authorized by a treaty is established with regard to the other contracting States and contracting organizations if it was formulated in accordance with the required form and procedures.

4.1.2 Establishment of a reservation to a treaty which has to be applied in its entirety

When it appears, from the limited number of negotiating States and organizations and the object and purpose of the treaty, that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation to this treaty is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if all the contracting States and contracting organizations have accepted it.

4.1.3 Establishment of a reservation to a constituent instrument of an international organization

When a treaty is a constituent instrument of an international organization, a reservation to this treaty is established with regard to the other contracting States and contracting organizations if it is permissible and was formulated in accordance with the required form and procedures, and if it has been accepted in conformity with guidelines 2.8.8 to 2.8.11.

4.2 Effects of an established reservation

4.2.1 Status of the author of an established reservation

As soon as a reservation is established in accordance with guidelines 4.1 to 4.1.3, its author becomes a contracting State or contracting organization to the treaty.

4.2.2 Effect of the establishment of a reservation on the entry into force of a treaty

1. When a treaty has not yet entered into force, the author of a reservation shall be included in the number of contracting States and contracting organizations required for the treaty to enter into force once the reservation is established.

2. The author of the reservation may however be included at a date prior to the establishment of the reservation in the number of contracting States and contracting organizations required for the treaty to enter into force, if no contracting State or contracting organization is opposed.

4.2.3 Effect of the establishment of a reservation on the status of the author as a party to the treaty

The establishment of a reservation constitutes its author a party to the treaty in relation to contracting States and contracting organizations in respect of which the reservation is established if or when the treaty is in force.

4.2.4 Effect of an established reservation on treaty relations

1. A reservation established with regard to another party excludes or modifies for the reserving State or international organization in its relations with that other party the legal effect of the provisions of the treaty to which the reservation relates or of the treaty as a whole with respect to certain specific aspects, to the extent of the reservation.

2. To the extent that an established reservation excludes the legal effect of certain provisions of a treaty, the author of that reservation has neither rights nor obligations under those provisions in its relations with the other parties with regard to which the reservation is established. Those other parties shall likewise have neither rights nor obligations under those provisions in their relations with the author of the reservation.

3. To the extent that an established reservation modifies the legal effect of certain provisions of a treaty, the author of that reservation has rights and obligations under those provisions, as modified by the reservation, in its relations with the other parties with regard to which the reservation is established. Those other parties shall have rights and obligations under those provisions, as modified by the reservation, in their relations with the author of the reservation.

4.2.5 Non-reciprocal application of obligations to which a reservation relates

Insofar as the obligations under the provisions to which the reservation relates are not subject to reciprocal application in view of the nature of the obligations or the object and purpose of the treaty, the content of the obligations of the parties other than the author of the reservation remains unaffected. The content of the obligations of those parties likewise remains unaffected when reciprocal application is not possible because of the content of the reservation.

4.2.6 Interpretation of reservations

A reservation is to be interpreted in good faith, taking into account the intention of its author as reflected primarily in the text of the reservation, as well as the object and purpose of the treaty and the circumstances in which the reservation was formulated.

4.3 Effect of an objection to a valid reservation

Unless the reservation has been established with regard to an objecting State or organization, the formulation of an objection to a valid reservation precludes the reservation from having its intended effects as against that State or international organization.

4.3.1 Effect of an objection on the entry into force of the treaty as between the author of the objection and the author of a reservation

An objection by a contracting State or by a contracting organization to a valid reservation does not preclude the entry into force of the treaty as between the objecting State or organization and the reserving State or organization, except in the case mentioned in guideline 4.3.5.

4.3.2 Effect of an objection to a reservation that is formulated late

If a contracting State or a contracting organization to a treaty objects to a reservation whose late formulation has been unanimously accepted in accordance with guideline 2.3.1, the treaty shall enter into or remain in force in respect of the reserving State or international organization without the reservation being established.

4.3.3 Entry into force of the treaty between the author of a reservation and the author of an objection

The treaty enters into force between the author of a valid reservation and the objecting contracting State or contracting organization as soon as the author of the reservation has become a contracting State or a contracting organization in accordance with guideline 4.2.1 and the treaty has entered into force.

4.3.4 Non-entry into force of the treaty for the author of a reservation when unanimous acceptance is required

If the establishment of a reservation requires the acceptance of the reservation by all the contracting States and contracting organizations, any objection by a contracting State or by a contracting organization to a valid reservation precludes the entry into force of the treaty for the reserving State or organization.

4.3.5 Non-entry into force of the treaty as between the author of a reservation and the author of an objection with maximum effect

An objection by a contracting State or a contracting organization to a valid reservation precludes the entry into force of the treaty as between the objecting State or organization and the reserving State or organization, if the objecting State or organization has definitely expressed an intention to that effect in accordance with guideline 2.6.7.

4.3.6 Effect of an objection on treaty relations

1. When a State or an international organization objecting to a valid reservation has not opposed the entry into force of the treaty between itself and the reserving State or organization, the provisions to which the reservation relates do not apply as between the author of the reservation and the objecting State or organization, to the extent of the reservation.

2. To the extent that a valid reservation purports to exclude the legal effect of certain provisions of the treaty, when a contracting State or a contracting organization has raised an objection to it but has not opposed the entry into force of the treaty between itself and the author of the reservation, the objecting State or organization and the author of the reservation are not bound, in their treaty relations, by the provisions to which the reservation relates.

3. To the extent that a valid reservation purports to modify the legal effect of certain provisions of the treaty, when a contracting State or a contracting organization has raised an objection to it but has not opposed the entry into force of the treaty between itself and the author of the reservation, the objecting State or organization and the author of the reservation are not bound, in their treaty relations, by the provisions of the treaty as intended to be modified by the reservation.

4. All the provisions of the treaty other than those to which the reservation relates shall remain applicable as between the reserving State or organization and the objecting State or organization.

4.3.7 Effect of an objection on provisions other than those to which the reservation relates

1. A provision of the treaty to which the reservation does not relate, but which has a sufficient link with the provisions to which the reservation does relate, is not applicable in the treaty relations between the author of the reservation and the author of an objection formulated in accordance with guideline 3.4.2.

2. The reserving State or international organization may, within a period of twelve months following the notification of an objection which has the effect referred to in paragraph 1, oppose the entry into force of the treaty between itself and the objecting State or organization. In the absence of such opposition, the treaty shall apply between the author of the reservation and the author of the objection to the extent provided by the reservation and the objection.

4.3.8 Right of the author of a valid reservation not to comply with the treaty without the benefit of its reservation

The author of a valid reservation is not required to comply with the provisions of the treaty without the benefit of its reservation.

4.4 Effect of a reservation on rights and obligations independent of the treaty

4.4.1 Absence of effect on rights and obligations under other treaties

A reservation, acceptance of a reservation or objection to a reservation neither modifies nor excludes any rights and obligations of their authors under other treaties to which they are parties.

4.4.2 Absence of effect on rights and obligations under customary international law

A reservation to a treaty provision which reflects a rule of customary international law does not of itself affect the rights and obligations under that rule, which shall continue to apply as such between the reserving State or organization and other States or international organizations which are bound by that rule.

4.4.3 Absence of effect on a peremptory norm of general international law (*jus cogens*)

1. A reservation to a treaty provision which reflects a peremptory norm of general international law (*jus cogens*) does not affect the binding nature of that norm, which shall continue to apply as such between the reserving State or organization and other States or international organizations.

2. A reservation cannot exclude or modify the legal effect of a treaty in a manner contrary to a peremptory norm of general international law.

4.5 Consequences of an invalid reservation

4.5.1 Nullity of an invalid reservation

A reservation that does not meet the conditions of formal validity and permissibility set out in Parts 2 and 3 of the Guide to Practice is null and void, and therefore devoid of any legal effect.

4.5.2 Reactions to a reservation considered invalid

1. The nullity of an invalid reservation does not depend on the objection or the acceptance by a contracting State or a contracting organization.

2. Nevertheless, a State or an international organization which considers that a reservation is invalid should formulate a reasoned objection as soon as possible.

4.5.3 Status of the author of an invalid reservation in relation to the treaty

1. The status of the author of an invalid reservation in relation to a treaty depends on the intention expressed by the reserving State or international organization on whether it intends to be bound by the treaty without the benefit of the reservation or whether it considers that it is not bound by the treaty.

2. Unless the author of the invalid reservation has expressed a contrary intention or such an intention is otherwise established, it is considered a contracting State or a contracting organization without the benefit of the reservation.

3. Notwithstanding paragraphs 1 and 2, the author of the invalid reservation may express at any time its intention not to be bound by the treaty without the benefit of the reservation.

4. If a treaty monitoring body expresses the view that a reservation is invalid and the reserving State or international organization intends not to be bound by the treaty without the benefit of the reservation, it should express its intention to that effect within a period of twelve months from the date at which the treaty monitoring body made its assessment.

4.6 Absence of effect of a reservation on the relations between the other parties to the treaty

A reservation does not modify the provisions of the treaty for the other parties to the treaty *inter se*.

4.7 Effect of interpretative declarations

4.7.1 Clarification of the terms of the treaty by an interpretative declaration

1. An interpretative declaration does not modify treaty obligations. It may only specify or clarify the meaning or scope which its author attributes to a treaty or to certain provisions thereof and may, as appropriate, constitute an element to be taken into account in interpreting the treaty in accordance with the general rule of interpretation of treaties.

2. In interpreting the treaty, account shall also be taken, as appropriate, of the approval of, or opposition to, the interpretative declaration, by other contracting States or contracting organizations.

4.7.2 Effect of the modification or the withdrawal of an interpretative declaration

The modification or the withdrawal of an interpretative declaration may not produce the effects provided for in draft guideline 4.7.1 to the extent that other contracting States or contracting organizations have relied upon the initial declaration.

4.7.3 Effect of an interpretative declaration approved by all the contracting States and contracting organizations

An interpretative declaration that has been approved by all the contracting States and contracting organizations may constitute an agreement regarding the interpretation of the treaty.

5. Reservations, acceptances of reservations, objections to reservations, and interpretative declarations in cases of succession of States

5.1 Reservations in cases of succession of States

5.1.1 Newly independent States

1. When a newly independent State establishes its status as a party or as a contracting State to a multilateral treaty by a notification of succession, it shall be considered as maintaining any reservation to that treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates unless, when making the notification of succession, it expresses a

contrary intention or formulates a reservation which relates to the same subject matter as that reservation.

2. When making a notification of succession establishing its status as a party or as a contracting State to a multilateral treaty, a newly independent State may formulate a reservation unless the reservation is one the formulation of which would be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1.

3. When a newly independent State formulates a reservation in conformity with paragraph 2, the relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

4. For the purposes of this Part of the Guide to Practice, "newly independent State" means a successor State the territory of which immediately before the date of the succession of States was a dependent territory for the international relations of which the predecessor State was responsible.

5.1.2 Uniting or separation of States

1. Subject to the provisions of guideline 5.1.3, a successor State which is a party to a treaty as the result of a uniting or separation of States shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses its intention not to maintain one or more reservations of the predecessor State at the time of the succession.

2. A successor State which is a party to a treaty as the result of a uniting or separation of States may neither formulate a new reservation nor widen the scope of a reservation that is maintained.

3. When a successor State formed from a uniting or separation of States makes a notification whereby it establishes its status as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, that State shall be considered as maintaining any reservation to the treaty which was applicable at the date of the succession of States in respect of the territory to which the succession of States relates, unless it expresses a contrary intention when making the notification or formulates a reservation which relates to the same subject matter as that reservation. That successor State may formulate a new reservation to the treaty.

4. A successor State may formulate a reservation in accordance with paragraph 3 only if the reservation is one the formulation of which would not be excluded by the provisions of subparagraph (a), (b) or (c) of guideline 3.1. The relevant rules set out in Part 2 (Procedure) of the Guide to Practice apply in respect of that reservation.

5.1.3 Irrelevance of certain reservations in cases involving a uniting of States

When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the successor State, such reservations as may have been formulated by any such State which, at the date of the succession of States, was a contracting State in respect of which the treaty was not in force shall not be maintained.

5.1.4 Maintenance of the territorial scope of reservations formulated by the predecessor State

Subject to the provisions of guideline 5.1.5, a reservation considered as being maintained in conformity with guideline 5.1.1, paragraph 1, or guideline 5.1.2, paragraph 1 or 3, shall retain the territorial scope that it had at the date of the succession of States, unless the successor State expresses a contrary intention.

5.1.5 Territorial scope of reservations in cases involving a uniting of States

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of only one of the States forming the successor State becomes applicable to a part of the territory of that State to which it did not apply previously, any reservation considered as being maintained by the successor State shall apply to that territory unless:

(a) the successor State expresses a contrary intention when making the notification extending the territorial scope of the treaty; or

(b) the nature or purpose of the reservation is such that the reservation cannot be extended beyond the territory to which it was applicable at the date of the succession of States.

2. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of two or more of the uniting States becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States, no reservation shall extend to that territory unless:

(a) an identical reservation has been formulated by each of those States in respect of which the treaty was in force at the date of the succession of States;

(b) the successor State expresses a different intention when making the notification extending the territorial scope of the treaty; or

(c) a contrary intention otherwise becomes apparent from the circumstances surrounding that State's succession to the treaty.

3. A notification purporting to extend the territorial scope of a reservation in accordance with paragraph 2 (b) shall be without effect if such an extension would give rise to the application of contradictory reservations to the same territory.

4. The provisions of paragraphs 1 to 3 apply *mutatis mutandis* to reservations considered as being maintained by a successor State that is a contracting State, following a uniting of States, to a treaty which was not in force for any of the uniting States at the date of the succession of States but to which one or more of those States were contracting States at that date, when the treaty becomes applicable to a part of the territory of the successor State to which it did not apply at the date of the succession of States.

5.1.6 Territorial scope of reservations of the successor State in cases of succession involving part of territory

When, as a result of a succession of States involving part of the territory of a State, a treaty to which the successor State is a contracting State becomes applicable

to that territory, any reservation to the treaty formulated previously by that State shall also apply to that territory as from the date of the succession of States unless:

(a) the successor State expresses a contrary intention; or

(b) it appears from the reservation that its scope was limited to the territory of the successor State that was within its borders prior to the date of the succession of States, or to a part of this territory.

5.1.7 Timing of the effects of non-maintenance by a successor State of a reservation formulated by the predecessor State

The non-maintenance, in conformity with guideline 5.1.1 or 5.1.2, by the successor State of a reservation formulated by the predecessor State becomes operative in relation to another contracting State or a contracting organization only when notice of it has been received by that State or organization.

5.1.8 Late formulation of a reservation by a successor State

A reservation shall be considered as late if it is formulated:

(a) by a newly independent State after it has made a notification of succession to the treaty;

(b) by a successor State other than a newly independent State after it has made a notification establishing its status as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State; or

(c) by a successor State other than a newly independent State in respect of a treaty which, following the succession of States, continues in force for that State.

5.2 Objections to reservations in cases of succession of States

5.2.1 Maintenance by the successor State of objections formulated by the predecessor State

Subject to the provisions of guideline 5.2.2, a successor State shall be considered as maintaining any objection formulated by the predecessor State to a reservation formulated by a contracting State or contracting organization, unless it expresses a contrary intention at the time of the succession.

5.2.2 Irrelevance of certain objections in cases involving a uniting of States

1. When, following a uniting of two or more States, a treaty in force at the date of the succession of States in respect of any of them continues in force in respect of the State so formed, such objections to a reservation as may have been formulated by any of those States in respect of which the treaty was not in force on the date of the succession of States shall not be maintained.

2. When, following a uniting of two or more States, the successor State is a contracting State to a treaty to which it has maintained reservations in conformity with guideline 5.1.1 or 5.1.2, objections to a reservation made by another contracting State or a contracting organization shall not be maintained if the reservation is identical or equivalent to a reservation which the successor State itself has maintained.

5.2.3 Maintenance of objections to reservations of the predecessor State

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, any objection to that reservation formulated by another contracting State or by a contracting organization shall be considered as being maintained in respect of the successor State.

5.2.4 Reservations of the predecessor State to which no objections have been made

When a reservation formulated by the predecessor State is considered as being maintained by the successor State in conformity with guideline 5.1.1 or 5.1.2, a State or an international organization that had not formulated an objection to the reservation in respect of the predecessor State may not object to it in respect of the successor State, unless:

(a) the time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period; or

(b) the territorial extension of the treaty radically changes the conditions for the operation of the reservation.

5.2.5 Right of a successor State to formulate objections to reservations

1. When making a notification of succession establishing its status as a contracting State, a newly independent State may, in accordance with the relevant guidelines, formulate an objection to reservations formulated by a contracting State or a contracting organization, even if the predecessor State made no such objection.

2. A successor State, other than a newly independent State, shall also have the right provided for in paragraph 1 when making a notification establishing its status as a contracting State to a treaty which, at the date of the succession of States, was not in force for the predecessor State but in respect of which the predecessor State was a contracting State.

3. The right referred to in paragraphs 1 and 2 is nonetheless excluded in the case of treaties falling under guidelines 2.8.7 and 4.1.2.

5.2.6 Objections by a successor State other than a newly independent State in respect of which a treaty continues in force

A successor State, other than a newly independent State, in respect of which a treaty continues in force following a succession of States may not formulate an objection to a reservation to which the predecessor State had not objected, unless the time period for formulating an objection has not yet expired at the date of the succession of States and the objection is made within that time period.

5.3 Acceptances of reservations in cases of succession of States

5.3.1 Maintenance by a newly independent State of express acceptances formulated by the predecessor State

When a newly independent State establishes its status as a contracting State to a treaty, it shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a

contracting organization, unless it expresses a contrary intention within twelve months of the date of the notification of succession.

5.3.2 Maintenance by a successor State other than a newly independent State of express acceptances formulated by the predecessor State

1. A successor State, other than a newly independent State, in respect of which a treaty continues in force following a succession of States shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization.

2. When making a notification of succession establishing its status as a contracting State to a treaty which, on the date of the succession of States, was not in force for the predecessor State but to which the predecessor State was a contracting State, a successor State other than a newly independent State shall be considered as maintaining any express acceptance by the predecessor State of a reservation formulated by a contracting State or by a contracting organization, unless it expresses a contrary intention within twelve months of the date of the notification of succession.

5.3.3 Timing of the effects of non-maintenance by a successor State of an express acceptance formulated by the predecessor State

The non-maintenance, in conformity with guideline 5.3.1 or guideline 5.3.2, paragraph 2, by the successor State of the express acceptance by the predecessor State of a reservation formulated by a contracting State or a contracting organization becomes operative in relation to a contracting State or a contracting organization only when notice of it has been received by that State or that organization.

5.4 Legal effects of reservations, acceptances and objections in cases of succession of States

1. Reservations, acceptances and objections considered as being maintained pursuant to the guidelines contained in this Part of the Guide to Practice shall continue to produce their legal effects in conformity with the provisions of Part 4 of the Guide.

2. Part 4 of the Guide to Practice is also applicable, *mutatis mutandis*, to new reservations, acceptances and objections formulated by a successor State in conformity with the provisions of the present Part of the Guide.

5.5 Interpretative declarations in cases of succession of States

1. A successor State should clarify its position concerning interpretative declarations formulated by the predecessor State. In the absence of such clarification, a successor State shall be considered as maintaining the interpretative declarations of the predecessor State.

2. Paragraph 1 is without prejudice to cases in which the successor State has demonstrated, by its conduct, its intention to maintain or to reject an interpretative declaration formulated by the predecessor State.

Draft resolution II
Report of the International Law Commission on the work of its sixty-fifth session

The General Assembly,

Having considered the report of the International Law Commission on the work of its sixty-fifth session,[1]

Emphasizing the importance of furthering the progressive development and codification of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[2]

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development and codification of international law,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Recalling also the role of Member States in submitting proposals for new topics for the consideration of the International Law Commission, and noting in this regard the recommendation of the Commission that such proposals be accompanied by a statement of reasons,

Reaffirming the importance for the successful work of the International Law Commission of the information provided by Member States concerning their views and practice,

Recognizing the importance of the work of the special rapporteurs of the International Law Commission,

Welcoming the holding of the International Law Seminar, which in 2014 will commemorate its fiftieth anniversary, and noting with appreciation the voluntary contributions made to the United Nations Trust Fund for the International Law Seminar,

Acknowledging the importance of facilitating the timely publication of the *Yearbook of the International Law Commission* and of eliminating the backlog,

Stressing the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

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[1] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10* (A/68/10).

[2] Resolution 2625 (XXV), annex.

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

Welcoming initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in General Assembly resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the Assembly,

1. *Takes note* of the report of the International Law Commission on the work of its sixty-fifth session;[1]

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its sixty-fifth session;

3. *Recommends* that the International Law Commission continue its work on the topics in its current programme, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee;

4. *Draws the attention* of Governments to the importance for the International Law Commission of having their views on the various aspects of the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report, regarding:

(a) Immunity of State officials from foreign criminal jurisdiction;

(b) Formation and evidence of customary international law;

(c) Provisional application of treaties;

(d) Protection of the environment in relation to armed conflicts;

5. *Also draws the attention* of Governments to the importance for the International Law Commission of having their comments and observations by 1 January 2014 on the draft articles and commentaries on the topic "Expulsion of aliens" adopted on first reading by the Commission at its sixty-fourth session;[3]

6. *Takes note* of the decision of the International Law Commission to include the topics "Protection of the environment in relation to armed conflicts" and "Protection of the atmosphere" in its programme of work,[4] and encourages the Commission to continue the examination of the topics that are in its long-term programme of work;

7. *Invites* the International Law Commission to continue to give priority to the topics "Immunity of State officials from foreign criminal jurisdiction" and "The obligation to extradite or prosecute (*aut dedere aut judicare*)";

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[3] *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 10* (A/67/10), para. 43.

[4] Ibid., *Sixty-eighth Session, Supplement No. 10* (A/68/10), paras. 167 and 168.

8. *Takes note* of paragraphs 169 and 170 of the report of the International Law Commission, and notes in particular the inclusion of the topic "Crimes against humanity" in the long-term programme of work of the Commission;[5]

9. *Also takes note* of paragraph 181 of the report of the International Law Commission, and requests the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution 56/272 of 27 March 2002;

10. *Welcomes* the efforts of the International Law Commission to improve its methods of work,[6] and encourages the Commission to continue this practice;

11. *Decides* to revert to the consideration of the recommendation contained in paragraph 388 of the report of the International Law Commission on the work of its sixty-third session[7] during the sixty-ninth session of the General Assembly;

12. *Invites* the International Law Commission to continue to take measures to enhance its efficiency and productivity and to consider making proposals to Member States to that end;

13. *Encourages* the International Law Commission to continue to take cost-saving measures at its future sessions, without prejudice to the efficiency and effectiveness of its work;

14. *Takes note* of paragraph 192 of the report of the International Law Commission, and decides that the next session of the Commission shall be held at the United Nations Office at Geneva from 5 May to 6 June and from 7 July to 8 August 2014;

15. *Stresses* the desirability of further enhancing the dialogue between the International Law Commission and the Sixth Committee at the sixty-ninth session of the General Assembly, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission attending the sixty-ninth session of the Assembly;

16. *Encourages* delegations, during the debate on the report of the International Law Commission, to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;

17. *Encourages* Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;

18. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in

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[5] The inclusion of the topic was guided by the criteria for selection of the topics adopted by the Commission in 1998 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 10* and corrigendum (A/53/10 and Corr.1), para. 553).

[6] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10), paras. 370-388.

[7] *Official Records of the General Assembly, Sixty-sixth Session, Supplement No. 10* (A/66/10).

written form, would be of particular interest in providing effective guidance for the Commission in its further work;

19. *Takes note* of paragraphs 193 to 198 of the report of the International Law Commission[1] with regard to cooperation and interaction with other bodies, and encourages the Commission to continue the implementation of articles 16 (*e*), 25 and 26 of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

20. *Notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

21. *Reaffirms* its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing assistance to the International Law Commission, including in the preparation of memorandums and studies on topics on the agenda of the Commission;

22. *Also reaffirms* its previous decisions concerning the documentation and summary records of the International Law Commission;[8]

23. *Welcomes* the institutionalization of the practice of the Secretariat to include the provisional summary records on the website relating to the work of the International Law Commission;

24. *Stresses* the need to expedite the preparation of the summary records of the International Law Commission, and welcomes the experimental measures taken to streamline the processing of summary records during the sixty-fifth session of the Commission;[9]

25. *Takes note* of paragraph 188 of the report of the International Law Commission, stresses the unique value of the *Yearbook of the International Law Commission*, and requests the Secretary-General to ensure its timely publication in all official languages;

26. *Further takes note* of paragraph 188 of the report of the International Law Commission, expresses its appreciation to Governments that have made voluntary contributions to the trust fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the trust fund;

27. *Takes note* of paragraph 189 of the report of the International Law Commission, expresses its satisfaction with the remarkable progress achieved in the past few years in reducing the backlog of the *Yearbook of the International Law Commission* in all six languages, and welcomes the efforts made by the Division of Conference Management of the United Nations Office at Geneva, especially its Editing Section, in effectively implementing relevant resolutions of the General Assembly calling for the reduction of the backlog;

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[8] See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly.

[9] *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10* (A/68/10), para. 183.

28. *Further takes note* of paragraph 189 of the report of the International Law Commission, encourages the Division of Conference Management to provide continuous necessary support to the Editing Section in advancing the *Yearbook of the International Law Commission*, and requests that updates on progress made in this respect be provided to the Commission on a regular basis;

29. *Takes note* of paragraphs 184 and 185 of the report of the International Law Commission, underlines the importance of the publications of the Codification Division to the work of the Commission, and requests the Secretary-General to continue to publish the *Work of the International Law Commission* in all six official languages at the beginning of each quinquennium, the *Reports of International Arbitral Awards* in English or French and the *Summaries of the Judgments, Advisory Opinions and Orders of the International Court of Justice* in all six official languages every five years;

30. *Welcomes* the continuous efforts of the Codification Division to maintain and improve the website relating to the work of the International Law Commission;

31. *Expresses the hope* that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants representing the principal legal systems of the world, including in particular those from developing countries, will be given the opportunity to attend the Seminar, as well as delegates to the Sixth Committee, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations Trust Fund for the International Law Seminar;

32. *Takes note with appreciation* of paragraphs 216 to 218 of the report of the International Law Commission and, in particular, the decision of the Commission to organize a commemoration of the fiftieth anniversary of the International Law Seminar;

33. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue to consider ways to improve the structure and content of the Seminar;

34. *Underlines* the importance of the records and topical summary of the debate in the Sixth Committee for the deliberations of the International Law Commission, and in this regard requests the Secretary-General to forward to the Commission, for its attention, the records of the debate on the report of the Commission at the sixty-eighth session of the General Assembly, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

35. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and the draft articles adopted on either first or second reading by the Commission;

36. *Also requests* the Secretariat to make the complete report of the International Law Commission available as soon as possible after the conclusion of the session of the Commission for the consideration of Member States with due

anticipation and no later than the prescribed time limit for reports in the General Assembly;

37. *Encourages* the International Law Commission to continue to consider ways in which specific issues on which the views of Governments would be of particular interest to the Commission could be framed so as to help Governments to have a better appreciation of the issues on which responses are required;

38. *Recommends* that the debate on the report of the International Law Commission at the sixty-ninth session of the General Assembly commence on 27 October 2014.